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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/590,905	06/09/2000	Jens Herman Jensen	NI 127	1599
Klaus J. Bach 4407 Twin Oaks Drive Murrysville, PA 15668			EXAMINER MITCHELL, JOHN-PAUL N	
7590 01/05/2009			ART UNIT PAPER NUMBER 3652	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/590,905

**Applicant(s)**

JENSEN, JENS HERMAN

**Examiner**

John-Paul N. Mitchell

**Art Unit**

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 4, 6-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fretwell 5,556,250 in view of Novotney, Brannan, EP 786374 and Japanese Patent #10109585. Fretwell #5,556,250 discloses a loading platform that retracts under a truck. Fretwell's unit is mounted to the vehicle frame by cross members #144, col. 6, lines 10-17. Novotney element #27 and Brannan elements #36, #38 are bolted to the frame. Fretwell's unit is not adjustably mounted to the frame. EP 786374 discloses longitudinal adjustment to the frame "F", while Japanese Patent #10109585 discloses in Fig. 2 the use of a bolt and lower slot #35 type of adjustment. It would have been obvious to a mechanic with ordinary skill in the art at the time the invention was made to provide this adjustment feature to Fretwell. The motivation is to adapt the unit to various vehicles.

Claims 8-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fretwell #5,556,250 in view of Novotney, Brannan, EP 786374, Japanese Patent #10109585 as applied above, and further in view of Mortensen and Disque. Fretwell et al lacks the specific loading platform with transverse beam between lifting supports. Mortensen discloses a loading platform with transverse beam #44 between lifting supports. It would have been obvious to a mechanic with ordinary skill in the art at

the time the invention was made to substitute such a platform. The motivation is to load general material. Disque discloses the use of C-shaped channels and end stops #42, #43, see col. 3, lines 27+.

### ***Response to Arguments***

Applicant's arguments filed Jan. 23, 2003 have been fully considered but they are not deemed to be persuasive. Applicant's discussion of certain individual features of the several references is insufficient to show unobviousness where the rejection is based on a combination of the references (In re Young et al., 159 USPQ 725). It is within the purview of 35 U.S.C. 103 to select features from the prior art to effect results expected from these features (In re Skoner et al, 186 USPQ 80). Moreover, in evaluating such references, it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom (In re Preda 159 USPQ 342; In re Heldt 167 USPQ 676). The test for obviousness is not whether the feature of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art (In re Keller, 208 USPQ 871).

Determinations of obviousness take into account the collective teachings of the prior art and level of ordinary skill in the art. The claimed subject matter takes into account only knowledge which a person having ordinary skill in this art would find

obvious with the references relied upon by the examiner (In re McLaughlin 170 USPQ 209). The issue of obviousness is not only determined by what the references expressly state but also is determined by what they would fairly suggest to those of ordinary skill in the art (In re Delisle 160 USPQ 806; In re Bozek 163 USPQ 545). It is noted that skill, not the converse, is presumed on the part of those practicing in the art (In re Sovish 226 USPQ 771) and the conclusion of obviousness can be made from "common sense" of the person of ordinary skill in the art (In re Bozek 163 USPQ 545). Since the claimed subject matter would have been obvious from the references, it is immaterial that the references do not state the problem or advantage ascribed by applicant (In re Wiseman 201 USPQ 658).

Applicant argues that the transverse members are adapted to various frames. Only the embodiment shown in Fig. 10 is adjustable. No structure is recited in claim 1 for adapting to various frames.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John-Paul N. Mitchell whose telephone number is (571) 270-5226. The examiner can normally be reached on 5/4/9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571)272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Saúl J. Rodríguez/  
Supervisory Patent Examiner, Art  
Unit 3652

J-PNM

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